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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 410, 411, 414, 417, 422, 423, 424, 425, and 460

[CMS-1654-CN3]

RIN 0938-AS81

Medicare Program; Revisions to Payment Policies under the Physician Fee Schedule and Other Revisions to Part B for CY 2017; Medicare Advantage Bid Pricing Data Release; Medicare Advantage and Part D Medical Loss Ratio Data Release; Medicare Advantage Provider Network Requirements; Expansion of Medicare Diabetes Prevention Program Model; Medicare Shared Savings Program Requirements; Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects technical and typographical errors that appeared in the final rule published in the November 15, 2016 **Federal Register** (81 FR 80170). That rule is entitled, “Medicare Program; Revisions to Payment Policies under the Physician Fee Schedule and Other Revisions to Part B for CY 2017; Medicare Advantage Bid Pricing Data Release; Medicare Advantage and Part D Medical Loss Ratio Data Release; Medicare Advantage Provider Network Requirements; Expansion of Medicare Diabetes Prevention Program Model; Medicare Shared Savings Program Requirements.”

DATES: This correcting document is effective January 1, 2017.

FOR FURTHER INFORMATION CONTACT: Jessica Bruton (410) 786-5991.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc 2016-26668 (81 FR 80170 through 80562), the final rule entitled, “Medicare

Program; Revisions to Payment Policies under the Physician Fee Schedule and Other Revisions to Part B for CY 2017; Medicare Advantage Bid Pricing Data Release; Medicare Advantage and Part D Medical Loss Ratio Data Release; Medicare Advantage Provider Network Requirements; Expansion of Medicare Diabetes Prevention Program Model; Medicare Shared Savings Program Requirements” there were a number of technical and typographical errors that are identified and corrected in this correcting document. These corrections are effective as if they had been included in the document published November 15, 2016. Accordingly, the corrections are effective January 1, 2017.

II. Summary of Errors

A. Summary of Errors in the Preamble

On page 80252, in our discussion of certain primary care services, we made typographical errors and referenced the final HCPCS G-codes incorrectly.

On page 80268, we made a typographical error in the new locality number for Stockton-Lodi-CA.

On page 80330, due to a drafting error, we inadvertently stated that we did not receive any comments on our proposals for the Electroencephalogram (EEG) family of codes, CPT Codes 95812, 95813, and 95957.

On page 80540, we inadvertently included language in our discussion of ICRs regarding payment to organizations that provide Medicare Diabetes Prevention Program Services.

On page 80543, due to a drafting error, in our discussion of RVUs relative to 2016, we inadvertently used the result descriptors incorrectly.

On page 80543, due to typographical errors the title of Table 51 and the CY 2017 RVU Budget Neutrality Adjustment are incorrect.

B. Summary and Correction of Errors in the Addenda on the CMS Website

Due to a data error, the incorrect CY 2017 PE RVUs are included in Addendum B for HCPCS codes G0422 and G0423. The corrected CY 2017 PE RVUs for these codes are reflected in the corrected Addendum B available on the CMS website at www.cms.gov/PhysicianFeeSched/.

III. Waiver of Proposed Rulemaking

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of the proposed rule in the **Federal Register** before the provisions of a rule take effect. Similarly, section 1871(b)(1) of the Act requires the Secretary to provide for notice of the proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment. In addition, section 553(d) of the APA and section 1871(e)(1)(B)(i) of the Act mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the APA notice and comment, and delay in effective date requirements; in cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act as well. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal notice and comment rulemaking procedures for good cause if the agency makes a finding that the notice and comment process is impracticable, unnecessary, or contrary to the public interest; and includes a statement of the finding and the reasons for it in the rule. In addition, section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and the agency includes in the rule a statement of the finding and the reasons for it.

In our view, this correcting document does not constitute a rulemaking that would be subject to these requirements. This document merely corrects technical errors in the CY 2017

PFS final rule. The corrections contained in this document are consistent with, and do not make substantive changes to, the policies and payment methodologies that were proposed subject to notice and comment procedures and adopted in the CY 2017 PFS final rule. As a result, the corrections made through this correcting document are intended to resolve inadvertent errors so that the rule accurately reflects the policies adopted in the final rule.

Even if this were a rulemaking to which the notice and comment and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the CY 2017 PFS final rule or delaying the effective date of the corrections would be contrary to the public interest because it is in the public interest to ensure that the rule accurately reflects our policies as of the date they take effect. Further, such procedures would be unnecessary because we are not making any substantive revisions to the final rule, but rather, we are simply correcting the **Federal Register** document to reflect the policies that we previously proposed, received public comment on, and subsequently finalized in the final rule. For these reasons, we believe there is good cause to waive the requirements for notice and comment and delay in effective date.

IV. Correction of Errors

In FR Doc. 2016-26668 of November 15, 2016 (81 FR 80170-80562), make the following corrections:

1. On page 80252,
 - a. First column; in the section heading, 5. Assessment and Care Planning for Patients with Cognitive Impairment (GPPP6); line 3, the code “(GPPP6)” is corrected to read “(G0505)”.
 - b. Third column; first partial paragraph, line 6, the codes “GPPP1, GPPP2, GPPP3,

GPPPX).” are corrected to read “G0502, G0503, G0504, G0507).”.

c. Third column; first partial paragraph, line 12 and 13, the codes ““GPPP1, GPPP2, GPPP3, and GPPPX” are corrected to read “G0502, G0503, G0504 and G0507”.

3. On page 80268, top third of the page; in Table 15, MSA-Based Fee Schedule Areas in California-Continued, the list entry:

Current Locality Number	New Locality Number	Fee Schedule Area (MSA name)	Counties	Transition area
99.....	73	Stockton-Lodi, CA	San Joaquin	YES

is corrected to read:

Current Locality Number	New Locality Number	Fee Schedule Area (MSA name)	Counties	Transition area
99.....	68	Stockton-Lodi, CA	San Joaquin	YES

4. On page 80330, second column, third full paragraph; lines 1 and 2 the sentence “We did not receive any comments on our proposals for this family of codes.” is corrected to read “We received comments on the clinical labor task “perform procedure” for CPT codes 95812 and 95813, but these comments did not address the information contained in the RUC’s PE summary of recommendations, which served as the primary rationale for our proposal. Instead, the commenters stated that the clinical labor task is not temporally equivalent to the services performed by the physician.”

5. On page 80540, third column; first full paragraph,

a. Lines 2 through 4, the phrase “Security Act exempts the Center for Medicare and Medicaid Innovation (CMMI) model tests and expansion,” is corrected to read “Security Act exempts models tested and expanded under section 1115A of the Act,”.

b. Line 11, the phrase “evaluation of CMMI models or” is corrected to read “evaluation of models or”.

6. On page 80543,

a. Third column, first full paragraph, line 10, the phrase “an overall decrease” is corrected to read “an overall increase”.

b. Third column, first full paragraph, line 12, the phrase “neutrality adjustment that is positive.” is corrected to read “neutrality adjustment that is negative.”

c. Bottom third of the page in Table 51, Calculation of the Final CY 2017 Anesthesia Conversion Factor (CM Estimate);

(1) The parenthetical in the table heading “(CM Estimate)” is removed.

(2) The list entry:

CY 2016 National Average Anesthesia Conversion Factor		21.9935
CY 2017 RVU Budget Neutrality Adjustment	0.013 percent (0.99987)	

is corrected to read:

CY 2016 National Average Anesthesia Conversion Factor		21.9935
CY 2017 RVU Budget Neutrality Adjustment	-0.013 percent (0.99987)	

CMS-1654-CN3

Dated: December 22, 2016.

Wilma M. Robinson,

Deputy Executive Secretary to the Department,

Department of Health and Human Services.

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